

Remarks

The November 18, 2005 Office Action raised a written description/enablement requirement rejection. It also raised anticipation and obviousness rejections relying primarily on newly-cited art. In view of the amendment above and remarks below, reconsideration is respectfully requested.

§ 112

The Office Action objected to the phrase "the real object is not appreciable". While it is correct that term was not present in verbatim form in the original specification, paragraph [0030] of the original specification recited:

...Thus, while neither the fragmentary first image feature by itself nor the fragmentary second image feature by itself constitutes or suggests the overall image feature, the overlapping of the two image features produces the overall image feature.

Further, paragraph [0035] emphasized that the overall image feature has a recognizable form and meaning which are substantially different than that provided by the sum of the first imagery plus the second imagery when not overlapped. See also the drawings. Hence, there was adequate support for the underlying concept in the original specification.

In any event, to facilitate allowance, language more closely tracking the specification's language is now incorporated into claim 1, and thus all claims. Hence, this issue is believed to be adequately addressed.

§ 102

The Office Action relies on three pages of Kohler literature, each asserted to be anticipatory with respect to claims 1-8. This finding is respectfully traversed.

A. With respect to the Kohler "Forum" shower door design advertisement one door shows two "loner" fish and the other door shows a school of fish. When the doors are overlapped fully a school of fish will still be depicted,

albeit a slightly larger one (with the two loner fish now joined up with the rest of the school).

Thus, the images on one of the doors already has essentially the same meaning as the overall image (a school of fish), and in any event the individual separate images on the doors, when both are considered, suggest the overall image. Thus, this advertisement should not be considered anticipatory.

B. The K-704124-A2-SH "Portico" doors contain abstract designs, not representations of real objects. Hence, they don't depict any real object before or after overlapping, and in any event the overlapped design doesn't have a different meaning from what the separate designs did. Thus, again, the limitations of amended claim 1 (and hence the other pending claims) are therefore not met.

C. With reference to the "Senza" shower door advertisement, this is the product previously discussed at paragraphs [0005] - [0006] of the specification. For that design the floral components on the individual doors tend to clutter together when overlapped (and present a more muddled design).

In any event, the meaning of the design doesn't materially change due to overlapping. Both the first and second imagery individually, and the combined design, all present a floral/vine representation. The meaning of the overall design is the same as for the individual images. Further, the individual images suggest the combined design.

Thus, again, no anticipation should be found with respect to the amended claims.

§ 103

A. The distinctions noted above are also applicable with respect to claims 2-4 vis a vis the Kohler advertisement art. In any event, the Office Action did not adequately address the additional limitations of claims 2-4. Instead, it

merely asserted that they can be ignored as "printed matter". This latter finding is also respectfully traversed.

There is no prohibition of reliance on printed matter as patentable content when the printed matter is functionally related to the underlying object of the invention. As that is the case here, reliance on the printed matter doctrine to ignore the claim 2-4 limitations was inappropriate.

In the case of In re Ngai, 367 F.3d 1336 (Fed. Cir. 2004) the Court found instructions used with an RNA kit to constitute printed matter of a type that couldn't be relied on for patentability. However, the Court also recognized that this situation was distinguishable from one where there was a functional relationship between the printed matter and substrate, referring to In re Gulack, 703 F.2d 1381 (Fed. Cir. 1983).

The present situation is like Gulack in that the printed matter (the imagery) functionally interrelates with the movement of the doors. This is not like Ngai where the printed matter is just a set of instructions that don't functionally work with the product.

Hence, ignoring the claim 2-4 additional limitations was not permitted under Federal Circuit precedent. Thus, there is an additional reason for removing the obviousness finding vis a vis claims 2-4 (in addition to dependency from what should now be considered allowable claim 1).

B. The Office Action also rejected the claims based on the three items of Kohler art in combination with U.S. patent 4,126,172. However, that shower closure system always overlapped the curtains when they were along the entry. There was no separate use of the forward curtain.

In any event, the birds from one curtain, and the clouds from the other, when both are considered, clearly suggested birds next to clouds when overlapped.

Conclusion

As such, reconsideration and allowance of claims 1-8 are respectfully requested. No additional fee is believed to be necessary for the entry of this submission. However, if one is, please charge the amount of the fee to Deposit Account 17-0055.

Respectfully submitted,

Hsin-I C. Tsai

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By:

Carl R. Schwartz, Esq.  
Reg. No.: 29,437  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 277-5715

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